

STEPHEN C. RYAN, ID # 4255
STEPHEN C. RYAN, P.C.
42014 N. Venture Dr., C-114
Anthem, Arizona 85086
steveryan@azis.com
(623) 551-3813
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

JOHN PEARSON and
STEPHANIE LEE, husband and
wife,

Plaintiffs,

vs.

WRIGHT MEDICAL
TECHNOLOGY, INC., a foreign
corporation,

Defendant.

CV 09-485-PHX-FJM

PLAINTIFFS' RESPONSE TO
DEFENDANT WRIGHT MEDICAL
TECHNOLOGY, INC.'S STATEMENT
OF FACTS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT; PLAINTIFFS
PEARSONS' SUPPLEMENTAL
STATEMENT OF FACTS

Responding to Defendant's Statement of Facts, Plaintiffs admit, deny and allege
as follows:

1. Admit.

2. Admit.

3. Admit.

4. Admit.

5. Admit.

6. Admit.

7. Admit.

8. Admit.

9. Admit, though Dr. Hendrickson's opinions would not, and have not, changed
based upon whether the implant was a single piece device or a modular device.

1 10. Admit that Dr. Hendrickson relied upon the lack of the possibility of fretting
2 but only to rebut the opinion of Defendant's expert that fretting caused the implant to
3 fracture. Dr. Hendrickson's opinions as to the cause of the implant fracturing were
4 independent of, and unrelated to, fretting.

5 11. Admit that Dr. Hendrickson relied upon the lack of the possibility of fretting
6 but only to rebut the opinion of Defendant's expert that fretting caused the implant to
7 fracture. Dr. Hendrickson's opinions as to the cause of the implant fracturing were
8 independent of, and unrelated to, fretting.

9 12. Admit that Dr. Hendrickson relied upon the lack of the possibility of fretting
10 but only to rebut the opinion of Defendant's expert that fretting caused the implant to
11 fracture. Dr. Hendrickson's opinions as to the cause of the implant fracturing were
12 independent of, and unrelated to, fretting. (See Hendrickson Affidavit, Exhibit 1.)

13 13. Admit.

14 14. Admit.

15 15. Admit.

16 16. Admit.

17 17. Admit Dr. Hendrickson so testified but, again, his opinions as to the cause of
18 the fracture are independent of, and unrelated to, fretting.

19 18. Admit Dr. Hendrickson so testified but, again, his opinions as to the cause
20 of the fracture are independent of, and unrelated to, fretting.

21 19. Admit.

22 20. Admit.

23 21. Admit this is Dr. Ochoa's contention and opinion.

24 22. Admit this is Dr. Ochoa's contention and opinion.

25 23. Admit.

26 24. Admit but deny as irrelevant and immaterial. Dr. Hendrickson does not
27 have to understand Wright Medical's manufacturing process to scientifically examine,
28

1 and opine upon, the cause of this metallurgical fracture.

2 25. Deny as irrelevant and immaterial whether Dr. Hendrickson reviewed any
3 of Defendant's "manufacturing records, processing records, or design history" records.
4 Nor do the deposition excerpts quoted by Defendant support Defendant's factual
5 statement. As to Defendant's statement that Dr. Hendrickson "knows nothing about
6 the condition of the implant when it left Defendant's control", that is contradicted by
7 Dr. Hendrickson's testimony and his Affidavit. (Plaintiffs' SOF, Exhibit #1.)
8 Dr. Hendrickson has testified that the prosthesis would have left Defendant's control
9 containing numerous microcracks on the outer surface of the stem of the prosthesis.

10 26. Admit but deny as irrelevant and immaterial. Dr. Hendrickson does not
11 need to know about the "surgical technique" of Mr. Pearson's orthopedic surgeons or
12 the content of Mr. Pearson's actual medical records to opine as to the metallurgical
13 cause of the implant's failure.

14 **PLAINTIFFS' SUPPLEMENTAL STATEMENT OF FACTS**

15 1. As Dr. Hendrickson's attached Affidavit indicates, his opinion that the
16 prosthesis failed due to a premature fatigue crack resulting from a manufacturing
17 defect has nothing to do with whether the prosthesis was a one-piece structure or a
18 modular structure. (See attached Affidavit of Lester Hendrickson, Exhibit 1.)

19 2. Dr. Hendrickson's deposition testimony makes it clear that even if he had
20 understood that the prosthesis was a modular implant which would allow metal to
21 metal contact to occur, his opinions as to the cause of the implant's fracture were based
22 upon other findings with respect to his examination, not related to the possibility of
23 whether fretting could have occurred:

24 "Q. Do you wish you had known before you formed your opinions in this
25 matter that it was a Profemur Z?

26 A. No.

27 Q. With a short neck?
28

1 A. No.

2 I mean, it would have – it may have been – it may have had an
3 influence on – if in fact you’re correct about this metal-on-metal contact,
4 it could have had an influence there on my decision, on my opinion, but it
5 would not have made any difference in the conclusions I reached about
6 the type of failure this was or what caused it. Those opinions were based
7 purely on physical evidence.

8 Q. Is there anything that could change your mind in this case, Professor?

9 A. My mind about what? About what?

10 Q. – Hendrickson.

11 A. No, nothing will change my –

12 Q. – initiating the fracture versus a fretting phenomena?

13 A. No, nothing will change my – I don’t see anything at this point that
14 would change my opinion that this was caused by a manufacturing defect
15 and that it was a fatigue fracture.

16 It does appear that this information that you’ve represented in
17 Exhibit 6, if it is correct, there may have been metal-to-metal contact at
18 the origin.

19 Still don’t see any evidence of fretting.”

20 (Hendrickson 01/27/2010 deposition excerpts, page 136, line 4 to page 137, line 7,
21 attached as Exhibit 2.)

22 3. Dr. Hendrickson testified at his deposition that irrespective of whether there
23 had been metal-to-metal contact at or near the site of the fatigue fracture, the physical
24 evidence he saw excluded fretting as the cause of the failure:

25 “Q. Why are the surface fissures you observe in photographs 11 through
26 14, inconsistent with fretting damage?

27 A. There are three reasons.

28 Q. Okay.

A. One of the reasons is that the pattern that you see in the wear
markings on a surface, which has been disturbed somewhat, is non-
linear. It goes into a variety of different directions.

Number two, there’s no debris in the fissures, even though they
are very fine, very deep, very tight fissures.

1 Number three, there isn't a bit of – shred of evidence of any pitting
2 in the area where the fissures are located. The pitting is one of the
3 unique characteristics of fretting.

4 And finally fourth – I guess there is a fourth reason – is that there
5 is no physical contact between the location of this – these fissures and
6 any other metal component in the whole system.”

7 (Hendrickson January 27, 2010 deposition, page 96, lines 3 through 22, attached as
8 Exhibit 2.)

9 4. The operative report prepared by Dr. Firestone states that to remove the
10 remainder of the fractured neck from the femoral stem of the prosthesis, Dr. Firestone
11 spent two hours, and went through twelve separate metal drill bits, just to remove the
12 remainder of the modular neck from the stem. Dr. Firestone even referred to the
13 fractured neck as being “soldered” in place. (See Exhibit E to Defendant’s Statement of
14 Facts.)

15 5. As Dr. Hendrickson’s attached Affidavit indicates, the need to spend two
16 hours and twelve drill bits to remove the remaining portion of the fractured neck
17 makes it clear that the repetitive motion between two metal surfaces, which all experts
18 in this case agree needs to be present before fretting can even be a possibility, could
19 not have been occurring. (Hendrickson Affidavit, Ex. 1.)

20 6. As Dr. Hendrickson’s Affidavit indicates, he bases his opinions as to the
21 prosthesis being defectively manufactured by his observations of the actual area of the
22 fatigue fracture, an analysis that is independent of whether the prosthesis was a
23 modular prosthesis or whether the neck and stem were one piece. The validity of his
24 opinions did not depend, and still do not depend, on whether the prosthesis was
25 modular or a single component. (Hendrickson Affidavit, Exhibit 1.)

26 7. Wright Medical has admitted liability for Mr. Pearson’s fractured prosthesis.
27 Plaintiff John Pearson so testified at his deposition:

28 “Q. Have you spoken with anyone from Wright Medical about the failure of the
29 hip prosthesis?

30 A. Have I ever?

1 Q. Correct.

2 A. Yes, I have.

3 Q. Let's talk about that for a moment. When's the first time you talked to
4 someone from Wright?

5 A. July '08.

6 ...

7 Q. Who did you speak with?

8 A. Debbie Dauer.

9 Q. What's your understanding of Ms. Dauer's position at Wright?

10 A. She is a risk manager with risk management. Thank you.

11

12 Q. Did Ms. Dauer ever tell you what she thought caused the prosthesis to fail?

13 A. She had said several times that they were responsible for it, that it was their
14 fault.

15 (Deposition of John Pearson excerpts, 02/18/2010, page 88, line 7 to page 89, line 1;
16 page 90, lines 6 to 9, attached as Exhibit 3.)

17 8. Attached as Exhibit 4 is John Pearson's Affidavit in which he states that
18 Defendant Wright Medical's Risk Manager, Debbie Dauer, admitted to Mr. Pearson, in
19 their initial phone conversation, that Wright was "at fault" for the fractured prosthesis
20 and that Defendant wanted to "make it right" with Mr. Pearson for what he had
21 experienced. (See attached Exhibit 4.)

22 DATED this 30th day of April, 2010.

23 STEPHEN C. RYAN, P.C.

24 By /s/ Stephen C. Ryan
25 42104 N. Venture Ct., C-114
26 Anthem, Arizona 85086
27 *Attorney for Plaintiffs*
28

....

1 COPY of the foregoing
2 delivered/mailed
3 this 30th day of April, 2010 to:

4 The Honorable Frederick J. Martone,
5 District Court Judge

6 Donald L. Myles, Jr., Esq.
7 Donn Christopher Alexander, Esq.
8 Jones, Skelton & Hochuli
9 2901 N. Central, Suite 800
10 Phoenix, Arizona 85012-2703
11 -and-
12 Michael V. Kell, Esq.
13 Howard and Howard Attorneys, PLLC
14 450 West Fourth Street
15 Royal Oak, MI 48067
16 Attorneys for Defendant Wright

17 By /s/ Cindy Rock